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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 1st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 August 1993, at 10.30 a.m.

Temporary Chairman: Mr. ALFONSO MARTINEZ

Chairman: Mr. AL-KHASAWNEH

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The meeting was called to order at 11.10 a.m.

OPENING OF THE SESSION

1. The TEMPORARY CHAIRMAN declared open the forty-fifth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

TRIBUTE TO THE MEMORY OF H.M. KING BAUDOUIN OF THE BELGIANS

2. The TEMPORARY CHAIRMAN, on behalf of the Sub-Commission, paid tribute to the memory of H.M. King Baudouin of the Belgians.

3. Mr. BOSSUYT and Mr. REYN (Observer for Belgium) thanked the Chairman for his expressions of sympathy.

STATEMENT BY THE OUTGOING CHAIRMAN

4. The TEMPORARY CHAIRMAN said that his term as Chairman of the forty-fourth session of the Sub-Commission had probably been the greatest challenge he had had to confront in his more than 30 years of activities within the context of the United Nations system. It had also confirmed something which he had always believed, namely, that there was always something new to be learnt from the United Nations system and that it was constantly developing in unexpected ways. Nevertheless, there had been moments of personal frustration, for instance, when apprehensions had been voiced that his convictions might affect his objectivity and impartiality as Chairman, and when he had been prevented from carrying out certain duties of the Chairman within the Organization. Those instances had not however cast a shadow over his term as Chairman.

5. As Chairman of the Sub-Commission he had carried out various activities over the preceding months. In February 1993, he had submitted his report on the forty-fourth session (E/CN.4/1993/60) to the Commission on Human Rights, and had also presented the report of the inter-sessional working group on the methods of work of the Sub-Commission (E/CN.4/Sub.2/1992/3 and Add.1). He had also participated in some of the working sessions of the Commission's officers when it had concluded its forty-ninth session. He had been impressed by the widely held belief that the two bodies should cooperate as fully as possible and by the appreciation of the work of the Sub-Commission, which was borne out by Commission resolution 1993/28. He intended to make practical suggestions on fulfilling the potential of the Sub-Commission to work with the Commission that he would submit at a later date to his colleagues. He had also taken part in the third and fourth sessions of the Preparatory Committee for the World Conference on Human Rights. Since he had no specific mandate in that connection, he had refrained from commenting on the content of the documents considered and the substantive affairs of the event itself. On the invitation of the United Nations Crime Prevention and Criminal Justice Branch he had attended the second session of the technical committee. He had emphasized the importance of strengthening coordination between the Sub-Commission and that body. In his expert capacity he would put forward ideas to that effect. Lastly, as Chairman of the Sub-Commission and a Special Rapporteur, he had taken part in the World Conference on Human Rights. The importance of that great event and the contents of its final document were evident, and would surely affect the Sub-Commission's work in the years ahead.

6. The Sub-Commission's priorities for the coming session were clear and included the need to analyse seriously the deterioration in human rights throughout the world and to propose appropriate measures, as well as to look at the theoretical and practical implications of United Nations activities carried out on the basis of Security Council decisions, in the light of concepts such as so-called "humanitarian intervention" and "preventive diplomacy". In his opinion, the Sub-Commission would have to make such an analysis at its current session.

STATEMENT ON BEHALF OF THE ASSISTANT SECRETARY-GENERAL FOR HUMAN RIGHTS

7. Mr. HOUSHMAND (Officer-in-Charge, Centre for Human Rights), speaking on behalf of the Assistant Secretary-General for Human Rights, said that the Sub-Commission held a unique place in the United Nations system for the promotion and protection of human rights, as a place of reflection, ideas and initiatives which touched on new problems, new standards and methods for protecting human rights, and which had made many practical contributions to that end. In addition, by reason of its privileged contacts with the non-governmental community, the Sub-Commission had often been the first to alert the world to emerging human rights problems and impending human rights disasters.

8. As a centre of thought and reflection on human rights, the Sub-Commission would be called upon to play an important role in the implementation of the Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by consensus at the 1993 World Conference on Human Rights.

9. The Vienna Declaration and Programme of Action was a truly remarkable document which was expected to mark a fundamental turning point in the United Nations approach to human rights. It was the result of the concerted efforts of the 172 States Members whose representatives had taken part in its elaboration, as well as of the hundreds of pre-conference meetings, and the contribution of 95 international organizations, expert treaty monitoring committees, bodies such as the Sub-Commission, national human rights institutions and the approximately 850 non-governmental organizations present in Vienna. It provided a truly global perspective on human rights.

10. The Vienna Declaration and Programme of Action rested solidly on the recognition of the achievements of the past. The validity of human rights principles, standards, methods and mechanisms of the United Nations were reaffirmed and their strengthening and improvement called for. The universality of human rights, the birthright of all human beings, was complemented by the affirmation of the universality of the content of human rights and of their beneficiaries. While national and regional particularities and historical, cultural and religious backgrounds must be kept in mind, States were obliged to respect and promote all internationally recognized human rights.

11. Another important facet of universality which preoccupied the World Conference was that of universality and protection and how to ensure that each individual could effectively enjoy human rights, regardless of where she or he lived, or the culture, religion or society to which she or he belonged. Many speakers had underlined the lack of a universal approach in international

actions to protect human rights. The Declaration called on the international community to treat human rights globally, in a fair and equal manner, on the same footing and with the same emphasis, universality, objectivity and non-selectivity being the key principles in the consideration of human rights issues.

12. The Vienna Declaration and Programme of Action represented an important shift in the emphasis of work towards effective protection of the human rights of all. The prime focus for the protection of human rights was on the national level. Accordingly, States had the first responsibility for protecting human rights and ensuring a remedy for violations. Thus universal ratification of human rights treaties had been set as an objective and States were encouraged to incorporate treaty provisions into national legislation. Special emphasis was given to the administration of justice and States were encouraged to make available increased resources for that purpose. The Declaration suggested the preparation of national plans of action for the promotion of human rights as one way of approaching, in a comprehensive manner, the promotion of human rights on the national level.

13. The international community, for its part, was urged to encourage States to strengthen national human rights infrastructures and practices. Upon request, the international community should be ready to assist in a wide range of areas, including training, education and help with elections. That would entail a significant broadening and strengthening of the advisory services programme and the elaboration of a comprehensive United Nations programme to help States build and strengthen national structures which had a direct impact on the observance of human rights and the rule of law.

14. Internationally, the World Conference called for a coordinated approach by international organizations and bodies to the promotion and protection of human rights. Thus the Centre for Human Rights had been given a heavy responsibility in coordinating the system-wide action for human rights. Annual high-level meetings of officials of the specialized agencies and United Nations bodies would be the focal point for coordinating activities and assessing their impact on the enjoyment of human rights.

15. Emphasizing the importance of the effectiveness of United Nations activities, the World Conference recommended that the specialized agencies, United Nations bodies, regional organizations and prominent international and regional finance and development institutions should assess the impact of their policies, programmes and strategies on the enjoyment of human rights. The United Nations would now have to take into account from the planning stage the way its human rights activities affected the way people lived. Therefore, methods of work, procedures and mechanisms would be reviewed to see how they could have measurable effects on the actual enjoyment of human rights.

16. Progress in the conceptual understanding of human rights had also been made at Vienna. The mutually reinforcing relationship between democracy, development and human rights was recognized and the Conference called upon the actors in the field of development to keep that interrelationship constantly in mind. Thus, assistance for economic development must go hand in hand with strengthening human rights infrastructures. Further, the right to development

had been reaffirmed by consensus as an inalienable human right and new measures for its effective implementation called for, together with the increased involvement of grass-root NGOs in its implementation.

17. Similarly, the importance of promoting and protecting economic, social and cultural rights had been emphasized and concerted efforts to ensure recognition of those rights nationally, regionally and internationally had been called for. Moreover, the Conference had recommended the strengthening of the implementation of those rights through the drafting of an optional protocol to the International Covenant on Economic, Cultural and Social Rights, and the development of indicators.

18. The World Conference had also given its attention to extreme poverty, social exclusion and the rights of the disabled and had insisted on their full participation in the life of society and in the solution of problems concerning them.

19. Major progress had been made at Vienna towards the integration of respect for the human rights of women into the overall human rights programme. The Conference had recognized that the United Nations and Governments should give priority to the full and equal enjoyment by women of all human rights and that the equal status and human rights of women should be integrated into the mainstream of United Nations system-wide activities. Special importance had been given to the elimination of violence against women, to promoting the participation of women in development, and to health care, family planning and education. Universal ratification of the Convention on the Elimination of Discrimination against Women by the year 2000 had been called for, as had been more effective measures of implementation, including an optional complaints procedure.

20. To achieve those aims, the Conference had requested United Nations bodies and mechanisms and the treaty bodies to review, systematically and regularly, issues relating to women. The treaty monitoring bodies had been asked to include findings on those issues in their reports and to request the inclusion of gender-specific data in State party reports. The Sub-Commission already had two items relating to women on its provisional agenda and was thus in a good position to lead the way.

21. The World Conference had also given considerable attention to children's rights, calling for the universal ratification of the Convention on the Rights of the Child by 1995 and for special attention to be given to children in particularly difficult circumstances, as well as to the girl-child. There, too, the Conference had sought to involve all human rights organs and bodies and had recommended that the human rights situation of children be regularly reviewed and monitored by them.

22. Another matter directly related to the issue of universality was that of equality, dignity, tolerance and non-discrimination. Those issues constituted an important part of the Sub-Commission's mandate, and the World Conference had undoubtedly given new impetus and direction to the efforts to achieve them. The elimination of racism, racial discrimination and all other forms of discrimination had been reaffirmed as a priority matter for the United Nations and for Governments.

23. The World Conference had also dealt with intolerance based on religion or belief and with the rights of minorities and indigenous peoples. In the latter area it had called for the completion of the draft declaration as soon as possible, the updating of the mandate of the Working Group on Indigenous Populations, and the proclamation of a decade for indigenous peoples.

24. Other subjects of concern to the Sub-Commission dealt with by the World Conference had been the elimination of torture, enforced disappearances and the need to combat impunity for human rights violations.

25. The World Conference had also been concerned with protecting the high quality of existing United Nations human rights standards, many of them drafted by the Sub-Commission, and with avoiding the proliferation of human rights instruments. It had thus reaffirmed the guidelines contained in General Assembly resolution 41/120 and had urged that they be kept in mind in connection with the elaboration of new standards and that human rights treaty bodies be consulted on the need for drafting such standards. The Secretariat had been requested to carry out regular technical reviews of proposed new instruments.

26. Few matters on the Sub-Commission's agenda would not be influenced by the Vienna Declaration and Programme of Action, nor were there many priorities of the World Conference to which the Sub-Commission did not have a unique and substantive contribution to make. It was indeed in helping to direct greater attention to the impact of its activities on the enjoyment of human rights that the Sub-Commission had a most important role to play. The members of the Sub-Commission, by reason of their expertise and close contact with the NGO community, were particularly well placed to provide guidance on how United Nations activities could be focused on improving the actual enjoyment of human rights, including action to prevent violations, and on ways in which the effectiveness of the activities undertaken could be measured and evaluated.

27. The Vienna Declaration recommended, as the basis for follow-up activities, that United Nations organs and agencies consider ways and means of fully implementing the Conference's recommendations without delay. The possibility of a United Nations decade for human rights was raised and the Commission on Human Rights was called upon to carry out an annual review of the progress made. Finally, in 1998, during the fiftieth anniversary of the Universal Declaration of Human Rights, a system-wide review was to take place for the purpose of assessing progress in implementing the Declaration and Programme of Action, with special reference to the goal of universal ratification.

28. The issue of resources for the human rights programme had been of major concern to the Conference. In the Declaration and Programme of Action the Conference had recognized the growing disparity between the resources and needs of the Centre for Human Rights and had requested immediate steps to increase substantially the Centre's resources from the regular budget. The Conference had indicated clearly that those resources should support the work of the Centre so that it could respond to its many urgent mandates, which, of course, included the work of the Sub-Commission, provide for the implementation of the fact-finding procedures of the Commission on Human

Rights, ensure the effectiveness and functioning of the treaty bodies, and provide sufficient resources to the advisory services programme to enable it to respond to requests by States for assistance. The Conference had also called for increased contributions to the voluntary funds supporting the advisory services, activities in favour of indigenous peoples, and activities to combat racial discrimination.

29. The present resource situation of the Centre for Human Rights continued to be critical. In August 1992 the Centre had faced a financial crisis and the possibility of having to postpone or cancel important activities and to end the employment of a number of highly valued staff members. Supplementary financial resources had enabled the Centre to operate through the first half of 1993, but it was again facing a serious shortage of funds. Therefore, without a significant increase in financial and other resources, the Centre would not be able to carry out many of the mandates entrusted to it by the Commission, the Sub-Commission and the General Assembly.

30. The World Conference had provided the United Nations human rights programme with a solid basis for progress in the perspective of a cooperative effort by all concerned. In it the Sub-Commission had a major role to play. One of the key achievements of the Conference had been the mobilization of hundreds of grassroots organizations from all over the world, especially from the developing countries. That represented an important element in the future activity of the Organization. Never before had so many individuals from so many countries been directly involved in the work done by the United Nations on human rights. He proposed to build on that foundation by seeking a partnership between Governments, United Nations bodies, agencies and organs and the NGO community for the effective promotion and protection of human rights.

31. The realization of the promises made at Vienna to the peoples of the United Nations would be one of the most important challenges facing the international community at the end of the current century and the beginning of the next. He looked forward to working closely with the Sub-Commission in that important endeavour.

ELECTION OF OFFICERS (item 1 of the provisional agenda)

32. The TEMPORARY CHAIRMAN invited the Sub-Commission to elect its Chairman for the forty-fifth session.

33. Mr. HATANO nominated Mr. Al-Khasawneh.

34. Mr. KHALIFA and Mr. SACHAR seconded the nomination.

35. Mr. Al-Khasawneh was elected Chairman by acclamation.

36. Mr. Al-Khasawneh took the Chair.

37. The CHAIRMAN thanked members for the trust which they had placed in him by electing him Chairman. He noted that the Sub-Commission had acquired a certain standing in the United Nations system, particularly through its studies and standard-setting activities. However, the tradition of humanism

which provided the driving force for its work was entering a very difficult period in which much good will would be needed if it was to survive. The end of the cold war had led to a proliferation of ethnic and religious conflicts, and the machinery for dealing with them had collapsed before the emergence of "post-modern tribalism". Therefore, the Sub-Commission must redouble its efforts to protect minorities, striking a balance between uniformity and the realities of particularism.

38. He hoped that the statements to be made by participants would be brief. Representatives of NGOs speaking on the same issue might wish to make joint statements in order to prevent repetition, and time-consuming procedural debates should be avoided. Once the Sub-Commission had elected its officers, he would consult with them on further measures to rationalize its proceedings.

39. He invited nominations for the offices of Vice-Chairman.

40. Mrs. ATTAH nominated Mr. Yimer.

41. Mr. HELLER nominated Mrs. Forero Ucros.

42. Mrs. DAES nominated Mr. Eide.

43. Mr. Yimer, Mrs. Forero Ucros and Mr. Eide were elected Vice-Chairmen by acclamation.

44. The CHAIRMAN invited nominations for the office of Rapporteur.

45. Mr. CHERNICHENKO nominated Mr. Maxim.

46. Mr. Maxim was elected Rapporteur by acclamation.

ADOPTION OF THE AGENDA (item 2 of the provisional agenda) (E/CN.4/Sub.2/1993/1 and Add.1)

47. Mr. KHALIFA said that for years past the Sub-Commission had been under the impression that it had been adding to the legacy of human rights. Yet what was currently being seen in the outside world was a cold-blooded onslaught on humanity pursued with sheer impunity in at least a dozen areas of the world, with Bosnia, Somalia and Lebanon heading the list.

48. The Vienna Declaration and Programme of Action should have been made available in good time as the document required in-depth consideration by the Sub-Commission. The Sub-Commission could not pass judgement on the World Conference on Human Rights without seeing the document and it was therefore unlikely that it would be able to give proper consideration during the current session to the results of the Conference.

49. At the Sub-Commission's previous session, Mrs. Attah had suggested that consideration should be given to changing the subject matter of item 5 (b) of the agenda to "Monitoring the transition to democracy in South Africa". He considered that wording to that effect should replace the existing text of item 5 (b).

50. The CHAIRMAN understood that no formal decision had been taken as to whether the wording of item 5 (b) should be deleted or amended. If Mr. Khalifa wished to submit such an amendment he was, of course, free to do so.

51. Mrs. PALLEY hoped that the title of item 18 was shorthand for a broader topic which would include such issues as population transfer, migration and evictions.

52. She requested the officers to give a much higher priority to item 18 than was implied in its place towards the end of the provisional agenda. The item should be considered together with Mr. Eide's report (E/CN.4/Sub.2/1993/34 and Add.1-3).

53. The CHAIRMAN said that the officers would decide the priority to be given to the consideration of items, but would take note of Mrs. Palley's request.

54. Mr. EIDE agreed with Mr. Khalifa about the widening gap between what the Sub-Commission was doing and what was happening in the outside world. It might well be that the Sub-Commission should adopt a fresh approach to its task.

55. In the past the Sub-Commission had viewed Governments as the principal actors in the field of human rights. It was not Governments, however, which were to be blamed for the current situation but the "ethnic entrepreneurs" who opposed the whole concept of human rights. The Sub-Commission should be particularly troubled because the violence of those "ethnic entrepreneurs" was especially pervasive in Europe; some in the human rights community even encouraged those elements, for example, in terms of incitement to hatred.

56. Mrs. WARZAZI supported the comments of Mr. Khalifa and Mr. Eide. The Sub-Commission must adapt to the world situation and adopt an agenda which related to reality. In setting priorities, the Sub-Commission should therefore pay special attention to the protection of minorities linked in particular with the question of freedom of movement for migrant workers who were the victims of xenophobia in many countries.

57. She suggested that a new item on "humanitarian intervention" ("ingérence humanitaire") should be added to the agenda.

58. Mr. JOINET agreed with those who had drawn attention to the gap between the work accomplished by the Sub-Commission and reality. In the past, the Sub-Commission had confined itself largely to academic studies. Its future task would be much more arduous.

59. Mr. ALFONSO MARTINEZ said that he shared the concern expressed by other members about the dichotomy between the items on the Sub-Commission's agenda and the real world. The Sub-Commission needed to make an in-depth analysis of the situations requiring action and specific ways of dealing with them. The inclusion of an item devoted to the question of humanitarian intervention would be a welcome innovation.

60. Mrs. DAES said that she supported the introduction of the item proposed by Mrs. Warzazi and urged the officers to set aside enough time to consider the important work which had been carried out by the Working Group on Indigenous Populations.

61. Mr. HELLER said that the Sub-Commission had repeatedly been urged by its members to discuss topical and current situations. However, the specific role and objectives of the Sub-Commission should not be overlooked, especially when such situations would no doubt be covered under agenda items 4 and 6, and the terms of reference of other international forums should also be borne in mind.

62. With regard to Mrs. Warzazi's proposal, he said that a clear definition of humanitarian intervention was needed before the topic was included as an agenda item.

63. Mr. KHALIFA said that he supported Mrs. Warzazi's proposal but was inclined to disagree on the point at which it should be inserted into the agenda. It seemed more appropriate to engage in a discussion towards the end of the session, after the issue had been touched upon under agenda item 6. By that time, ideas and opinions would have taken a more concrete form and no doubts would remain about the expediency of the separate agenda item. The issue of humanitarian intervention was acquiring greater importance in world affairs and the term was being applied to a multitude of situations and actions, the result of which was sometimes less than desirable in relation to the application of humanitarian assistance and practice.

64. Mrs. PALLEY said that she disagreed with the statement made by Mr. Khalifa, in so far as humanitarian assistance in whatever form, be it military, political or economic, needed to be dealt with as early as possible in the session. There was an increasing need for a separate agenda item, in the light of gross human rights violations and the doubts about the legality of forms of intervention. There was also a need for a discussion on the enforcement power vested in the United Nations in accordance with the terms of the Charter of the United Nations. That power, which was confined to the United Nations, did not extend to individual Powers which undertook initiatives either by way of humanitarian assistance or political or military intervention. A study of the legal questions surrounding humanitarian assistance and intervention was long overdue.

65. Mr. SACHER said that he was in two minds as to the wisdom of introducing an item on humanitarian intervention. The overriding reason for that was the lack at that time of a basis on which to introduce it - the absence of a clear definition of humanitarian intervention or international phraseology to describe it. On the other hand, the grave danger of escalating politically-motivated humanitarian intervention had to be kept in mind. The various aspects involved in the issue could be considered in a working group.

66. Mr. EIDE said that he agreed that clarification of what humanitarian intervention entailed was essential. Not only situations, but also terminology such as humanitarian interference, intervention or action needed to be analysed so that the Sub-Commission would be in a better position to decide on which aspects to develop and discuss. He had been somewhat disappointed that the United Nations had not taken more forceful

action in Bosnia to put an end to the carnage but at the same time was increasingly concerned at some kinds of intervention, including the support given to secessionist groups in the guise of humanitarian assistance.

67. Mr. UL-HAKIM said that he endorsed the sentiments expressed by Mr. Khalifa concerning the failure to supply the documentation of the World Conference on Human Rights. With regard to agenda item 18, at the previous session of the Sub-Commission, he had advocated the inclusion of a specific item on voluntary and involuntary migration. In view of the human rights violations being suffered by migrant workers and other groups, the item should be included in the agenda of the present session.

68. The CHAIRMAN said that the Vienna Declaration and Programme of Action appeared in document A/CONF/157/23. With regard to the item on migration, he said that he believed that agenda item 18 included that issue.

69. Mr. CHERNICHENKO suggested that the Sub-Commission should call on the officers to allocate time to consider agenda item 4 and the question on humanitarian intervention and that a small informal working group should at the same time be set up to look at the various aspects of humanitarian assistance.

70. Mrs. CHAVEZ, supporting the statements made by Mr. Eide and Mr. Heller in respect of Mrs. Warzazi's proposal, said that although the topic was both relevant and a cause for concern, because it covered actions of the General Assembly the Sub-Commission might not be the appropriate forum for such a discussion.

71. Mr. JOINET asked for information on whether the Sub-Commission had decided at its previous session to delete some agenda items in the event that new items were included.

72. Mr. ALFONSO MARTINEZ said that although he could not remember any such decision being taken at the previous session, rule 8 of the rules of procedure did not provide for the substitution of one agenda item by another, and the rule itself could not be amended. In his opinion, item 4 already dealt with a range of issues, and the inclusion in that agenda item of the question of humanitarian intervention would further dilute its effectiveness.

73. The CHAIRMAN, summing up the various proposals put forward by members of the Sub-Commission, said that the question of humanitarian intervention was not really relevant under agenda item 6 and that there was merit in the statements that agenda item 4 already dealt with many subjects and was in danger of being overloaded. In order to facilitate the work of the Sub-Commission he suggested that the agenda should be adopted as it stood, on the understanding that Mrs. Warzazi's proposal would be discussed by the officers.

74. The provisional agenda (E/CN.4/Sub.2/1993/1 and Add.1) was adopted.

ORGANIZATION OF WORK

75. Mr. LEBAKINE (Secretary of the Sub-Commission), noting the stage reached in the distribution and translation of documents, said that in accordance with the usual procedure, only the documents relating to the business of the day would be available on the day of the meeting and that all substantive documents, with the exception of one report, had been received or submitted for translation.

TRIBUTE TO THE VICTIMS OF APARTHEID

76. The CHAIRMAN recalled that the Sub-Commission, in its decision 1985/109, had decided to observe, at the beginning of each session, a minute of silence in honour of the victims of apartheid.

77. The members of the Sub-Commission observed a minute of silence in honour of the victims of apartheid.

The meeting rose at 1.15 p.m.